



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

MEMORANDUM

SUBJECT: Slip Memorandum for PRP Search Start and Complete (QV-3), Operable Unit 08 – Railroads, Cherokee County Superfund site, Cherokee County, Kansas (KSD980741862)

FROM: Elizabeth Hagenmaier, Remedial Project Manager
Mining and Smelter Remediation Section

THRU: Cody McLarty, Chief
Mining and Smelter Remediation Section

TO: Scott D. Hayes, Acting Director
Superfund and Emergency Management Division

ELIZABETH
HAGENMAIER

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ELIZABETH HAGENMAIER
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The potentially responsible party (PRP) Search for operable unit (OU) 08 – Railroads at the Cherokee County Superfund site in Cherokee County, Kansas was scheduled to start Quarter 1/Fiscal Year 2022 and finish Quarter 4/Fiscal Year 2022. As detailed below, the current targets will not be achieved, and staff recommend elimination of the target for a PRP Search (QV-3) because this activity is no longer necessary.

The 2016 Record of Decision included approximately 43 miles of inactive rail lines. During remedial investigation/feasibility study (RI/FS) work, the EPA sought and received access from BNSF Railway for approximately 20 miles of these lines. The remaining portion of lines were thought to have no viable and liable successors to the rail companies. Based on the clear divisibility of the OU, the EPA approached the RD work on the premise that the BNSF-owned portion would be completed by BNSF and the remainder would be fund-lead.

In 2018, the EPA sent a special notice letter and information request to BNSF requesting a good faith offer (GFO) for conducting the RD work on the BNSF owned portion. In BNSF's response, the company asserted for the first time that it no longer owned any portion of the 20 miles of lines. Notwithstanding that, BNSF did acknowledge its ability to conduct the RD work and a willingness to negotiate. Following BNSF's GFO, the EPA completed a PRP Search (QV-1) in 2019 to complete a review of responsiveness of the BNSF-provided information.

The EPA Region 7 Office of Regional Counsel (ORC) reviewed BNSF-provided information and concluded (as BNSF had) that the company no longer held the property interests in the OU. As a result, the theory of any potential liability case against BNSF shifted from being based on current ownership—CERCLA 107(a)(1)—to ownership and operation at the time of disposal—CERCLA Section 107(a)(2). With disposal occurring almost a century ago, further development of the case on this theory took a substantial amount of time.



The EPA completed an addendum to the 2019 PRP Search report in a 2020 PRP Search report addendum tracked under a PRP Search activity (QV-2). Additional PRPs were identified in the addendum. The EPA sent general notice letters and information requests to Kansas City Southern Company and Union Pacific following the completion of the 2020 PRP Search report addendum.

Currently, the case team is reviewing responses to the EPA general notice letters and information requests from two additional rail companies. QV-3 was originally planned to allow for contractor support and documentation of the responses from the two additional rail companies. However, the support is no longer necessary, and ORC is internally managing the review and enforcement strategy for OU8.

Please review this memorandum and sign below if you agree with staff recommendations.

If you have any questions regarding this site, please contact Elizabeth Hagenmaier at (913) 551-7899.

APPROVAL:

Scott D.
Hayes

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6/8/22

Scott D. Hayes, Acting Director
Superfund & Emergency Management Division

Date